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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,569	04/21/2005	Bruno Teychene	37261P110	3938
8791 7590 06/09/2009 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
BACHMAN, LINDSEY MICHELLE				
ART UNIT		PAPER NUMBER		
3734				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,569

Applicant(s)

TEYCHENE, BRUNO

Examiner

LINDSEY BACHMAN

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008 and 22 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: WO 02/39810
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 February 2008 has been entered.

Response to Arguments

Applicant's arguments filed 26 February 2008 have been fully considered but they are not persuasive.

Regarding Applicant's assertion that the female tag component and attachment are positively claimed components of Applicant's invention, this argument is not persuasive. In Claim 1, the female tag component is only referred to in terms of its interaction with the male tag component in use:

"...a male tag component with a punch *that, in use, perforates the animal's ear and penetrates into a hollow head of a female tag component...*" (emphasis added)

A proper interpretation of this language only requires the ear tag to contain a male tag component with a punch that is capable of penetrating a female tag component. The attachment is a part of the sampling device of the female tag component, which as previously stated, is not positively claimed; for this reason, the

attachment is not positively claimed, either. For the purpose of advancing prosecution, the claims will be examined as if the female tag component and the attachment were positively claimed, however, correction is required.

Specification

The disclosure is objected to because of the following informalities: on page 4, the translator's note contradicts what is said in the specification.

Appropriate correction is required.

Claim Objections

Claims 12-20 are objected to because of the following informalities: it is unclear as to whether the female tag component and the attachment and the applicator are being claimed as part of the invention. Applicant initially refers to these components functionally in claim 1, then continues to claim them structurally later in Claim 1. Appropriate correction is required.

Drawings

Figures 13 and 14 were received on 26 February 2008.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 17-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In Claims 17 and 19, Applicant claims that the attachment and the sampling device "are slit over an opening". In the specification, Applicant refers to a slit (16), but there is no instance of a slitting action being performed. Further, it is unclear what Applicant is intending to claim with this language.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the female tag component is provided with a sampling device, which has a sampling device..." on lines 6-7. It is unclear if Applicant is referring to the same sampling device or claiming two separate sampling devices.

Claim 13 recites the limitation "the absorbent material" in lines 1-2, "the axis" in line 3 and the "the ear wall" in line 4. There is insufficient antecedent basis for these limitations in the claim.

Claim 15 recites the limitation "the interior" on line 2 and "the female tag panel" in line 3. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 12-19 rejected under 35 U.S.C. 102(b) as anticipated by Howe et al. (US Patent 4,694,781).

Claim 12: Howe'781 discloses a device that contains a male tag component (16, 17) with a punch (18) that is capable of penetrating an animal's ear and penetrating into a hollow head (12) of a female tag component (10). The female tag component (10) contains a sampling device (33) that is capable of sampling biological material from the ear of the animal. The sampling device extends outwardly from element 12 of the female tag component. The sampling device is separable from the female tag component (see Figure 5). The sampling device also contains an attachment (29) that can be used to attach to an applicator tool.

Claim 13: Howe'781 discloses that the sampling device (33) is an absorbent material. The absorbent material is perpendicular to the male punch because it extends radially from the hollow head (12) (see Figure 7).

Claim 14, 15, 16: The absorbent material (33) is capable of serving as a sampling strip. One end is fixed to the attachment (bottom portion placed within attachment 29; see Figure 7) while the other end is perpendicular to the direction of the

punch through the animals ear (top end extends radially from the punch (see Figure 7) attached to the hollow head (12, 13) (Figure 7).

Claim 17: The attachment (29) and sampling device (33) are located over an opening in the hollow head (12) of the female tag component (Figure 7).

Claim 18: The attachment (29) is fixed to the periphery of the hollow head (12) (see Figure 7).

Claim 19: The attachment and sampling device are located over an opening of the hollow head (see Figure 17).

Claims 12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Caisley (WO 02/39810).

Claim 12: Caisley'810 discloses a device that contains a male tag component (20, 21, 22) with a punch (3); a female tag component (15, 25) that is provided with a sampling device (1). The sampling device is separable from the female tag component (Figure 5). The sampling device contains an attachment (7) that can be used to attach the the sampling device to a jaw (32) of an applicator tool.

Claim 20: Caisley'810 disclose a tag for each the male and female components (20 and 25).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 13, 14, 16-20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caisley'810, as applied to Claim 12, in view of Sanjurjo, et al. (US Patent Application 2003/0172560).

Claim 13: Caiseley'810 does not teach a removable absorbable material.

Sanjurjo'560 teaches an ear tag for marking animals that contains a piece of filter paper that absorbs blood produced during tagging. After the blood has dried, the paper can be stored for future testing (paragraph 10). The filter paper is reinforced by a removable piece of plastic (paragraph 11) and the paper is oriented perpendicular to the vertical axis of the male punch (see Figure 2, male punch unlabeled). The filter paper is attached to the reinforcing plastic which is attached along one jaw of the applicator tool (Figure 2).

Sanjurjo'560 teaches that collecting blood samples on absorbent materials is common (paragraph 4). He also teaches that collecting blood samples while tagging avoids errors and saves money (paragraph 11). He also teaches that the filter paper can be stuck to a registration card for filing and later testing (paragraph 11). He also teaches that attaching the filter paper to a reinforcing piece of plastic allows the filter paper to be removed without being broken (paragraph 11). Therefore it would have been obvious to one skilled in the art at the time of the invention to couple a piece of absorbent material with an animal tagging device.

Claims 14: The claimed limitations referring to the orientation of the absorbent material would have been obvious matters of design choice since applicant has not

disclosed that having this specific feature solves any stated problem or is for any particular purpose.

Claim 16, 17, 18, 19: The attachment of Caisley'810 is fixed onto the periphery of the hollow head of the female tag component (Figure 3).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe'781, as applied to Claim 12, in view of Brem (US Patent 6,509,187).

Claim 20: The male component contains a panel (16) and the female component contains a panel (10). Both components are capable of being marked with identical symbols. Howe'781 does not teach marking all the components with a symbol/label.

Brem'187 teaches a device for tagging an animal and collecting a sample that contains a male tag component (10), a female tag component (11) and a sample collection element (Figure 1) attached to a tongue (9). Brem'187 teaches that all three components can be labeled with a symbol for the purpose of identifying which animal the tag corresponds (column 3, lines 15-26). It would have been obvious to one of ordinary skill in the art to modify the device of Howe'781 with the teachings of Brem'187 so that it too has this advantage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734